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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/597,274	07/19/2006	Fabio Vignoli	US040042US2	8760

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PHILIPS INTELLECTUAL PROPERTY & STANDARDS  
P.O. BOX 3001  
BRIARCLIFF MANOR, NY 10510

EXAMINER
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DISTEFANO, GREGORY A

ART UNIT	PAPER NUMBER
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2175

MAIL DATE	DELIVERY MODE
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06/24/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/597,274	<b>Applicant(s)</b> VIGNOLI ET AL.	
	<b>Examiner</b> GREGORY A. DISTEFANO	<b>Art Unit</b> 2175	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 15 June 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 8-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 8-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 July 2008 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

1. This action is in response to the request for continued examination filed on 5/15/2009.
2. Claims 1-6 and 8-20 have been submitted for examination.

***Continued Examination Under 37 CFR 1.114***

3. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 5/15/2009 has been entered.

***Specification***

4. The previous objections to specification are hereby withdrawn due to applicant's 5/15/2009 amendment.

***Claim Objections***

5. The previous objections to claim 13 are hereby withdrawn due to applicant's 5/15/2009 amendment.

***Claim Rejections - 35 USC § 101***

6. The previous rejection of claims 1-12 under 35 U.S.C. 101 is hereby withdrawn due to applicant's amendment filed on 5/15/2009 which amends claim 1 to include "a display".

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-7, 12-15, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dunning et al. (US 2003/0229537), hereinafter Dunning, in view of Porteus et al. (US 6,933,433), hereinafter Porteus.

9. As per claim 1, Dunning teaches the following:

*a playlist generator that is configured to create a playlist, and includes:*

*a user interface having means for enabling a user to identify an artist, said user interface having a display for displaying said playlist (see Fig. 11, #1101);*

*an artist similarity module that is configured to identify one or more artists similar to an identified artist to create an artist list, (pg. 15, paragraph [0252]), i.e. referring now*

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to Fig. 11, there is shown an example of a screen shot 1100 depicting sample artist-level relationships. Query term 1101 is shown, along with the list 1102 of recommended artists, generated by engine 107,

*said user interface displaying the artist list for the user (see Fig. 11, #1102);*

However, Dunning does not explicitly teach a method where the interface allows the user to approve or modify the artist and artists are selected iteratively. Porteus teaches the following:

*said user interface displaying the artist list for the user, and further comprising means for facilitating approval or modification of the artist list by a user, (column 3, lines 19-29), i.e. the user is presented with a plurality of artist blocks for each supergenre, along with the names of selected artists that have been categorized in each block when appropriate. The user is then asked for his or her preferences relating to the desirability of including such blocks into his/her station's rotation, as shown in block 12. In the preferred embodiment of the invention, the user is given four choices for the user's interest in hearing songs from each artist block, ranging from "Never" to "a Lot", with two levels of "Sometimes" in between. The user's expression of interest is used to adjust the preliminary ratings for all of the artists in that block;*

*an artist selector, operably coupled to the artist similarity module, that is configured to iteratively select an artist from the artist list upon initiation by the user of the generation of the playlist, (column 3, lines 56-57), i.e. to produce the master playlist, artists are chosen according to the rating assigned to them; and*

*an item selector, operably coupled to the artist selector, that is configured to:*

*select an item associated with the selected artist from a source of items, (column 3, lines 56-58), i.e. to produce the master playlist, artists are chosen according to the rating assigned to them, and individual songs by those artists are selected, and*

*include an identifier of the selected item in the playlist, (column 3, lines 56-58), i.e. to produce the master playlist, artists are chosen according to the rating assigned to them, and individual songs by those artists are selected for inclusion in the master playlist.*

It would have been obvious to one of ordinary skill in the art to have modified the artist similarity discovery method of Dunning with the rating and playlist creation method of Porteus. One of ordinary skill in the art would have been motivated to have made such modifications because both Dunning and Porteus are analogous art in the field of aiding users in creating playlists of songs. Upon the modification of Dunning in view of Porteus a user would first input and discover similar artists of an identified artist. The user would then be provided with the block interface of Porteus to modify the artist list and create the playlist.

10. Regarding claim 2, modified Dunning teaches the system of claim 1 as described above. Dunning further teaches the following:

*the artist similarity module is further configured to identify the one or more similar artists based on a plurality of artists associated with the source of items, (pg. 6, paragraph [0092]), i.e. search results may be augmented by including secondary results that are similar to or related to the primary results, according to the relationship discovery techniques of the present invention.*

11. Regarding claim 3, modified Dunning teaches the system of claim 1 as described above. Dunning further teaches the following:

*a collection of items of a user that correspond to the source of items, (pg. 8, paragraph [0130]), i.e. candidate songs are scored to find violations of sequence constraints by rule engine 164 that has access to a list of all potentially playable songs as audio files 165 and a listener history 167 containing the songs that the current listener has heard on this station.*

12. Regarding claim 4, modified Dunning teaches the system of claim 1 as described above. Dunning further teaches the following:

*a rendering device that is configured to render items identified in the playlist (see Fig. 23F).*

13. Regarding claim 5, modified Dunning teaches the system of claim 1 as described above. Dunning further teaches the following:

*the system is further configured to create a subset of source items from the source of items, based on one or more general preferences of the user, (pg. 7, paragraph [0106]), i.e. web site 106 offers the capability for suggesting tracks and artists that may interest the user, based on personal criteria 111, profiles 112, of track-level discovered relationships based on observed user listening behavior determined by log analysis 112 of play logs 114, and*

*the playlist generator is further configured to limit the selected item to the subset of source items (as may be seen in Dunning, the user is limited to results of a search. These presented artists are interpreted to be a “subset” of items, where the “items” are all possible results).*

14. Regarding claim 6, modified Dunning teaches the system of claim 1 as described above. Dunning further teaches the following:

*one or more items of the source of items are accessible via an Internet access, (pg. 6, paragraph [0092]), i.e. in one embodiment, module 104 presents a series of “browse pages”, viewable via web site 106, for browsing through lists of related music tracks and artists. The user may follow links for particular tracks and artists, to either play the tracks, or continue browsing for additional related tracks.*

15. Regarding claim 12, modified Dunning teaches the system of claim 1 as described above. Dunning further teaches the following:



*the item selector is further configured to select the selected item based on whether the selected item is similar to other items associated with the selected artist,* (pg. 6, paragraph [0092]), i.e. search results may be augmented by including secondary results that are similar to or related to the primary results, according to the relationship discovery techniques of the present invention.

16. As per claim 13, Dunning teaches the following:

*facilitating a user to identify an identified artist (see Fig. 11, #1101),  
using an artist similarity module to identify one or more similar artists to the identified artist thereby forming an artist list (see Fig. 11, #1102);*

However, Dunning does not explicitly teach a method where the interface allows the user to approve or modify the artist and artists are selected iteratively. Porteus teaches the following:

facilitating the approval or modification of the artist list by the user, (column 3, lines 19-29), i.e. the user is presented with a plurality of artist blocks for each supergenre, along with the names of selected artists that have been categorized in each block when appropriate. The user is then asked for his or her preferences relating to the desirability of including such blocks into his/her station's rotation, as shown in block 12. In the preferred embodiment of the invention, the user is given four choices for the user's interest in hearing songs from each artist block, ranging from "Never" to "a Lot", with two levels of "Sometimes" in between. The user's expression of interest is used to adjust the preliminary ratings for all of the artists in that block;

*using an artist selector to iteratively select an artist from the one or more similar artists, (column 3, lines 56-57), i.e. to produce the master playlist, artists are chosen according to the rating assigned to them,*

*using an item selector for the system to iteratively select an item associated with the selected artist, (column 3, lines 56-58), i.e. to produce the master playlist, artists are chosen according to the rating assigned to them, and individual songs by those artists are selected, and*

*include an identifier of the selected item in the playlist, (column 3, lines 56-58), i.e. to produce the master playlist, artists are chosen according to the rating assigned to them, and individual songs by those artists are selected for inclusion in the master playlist.*

It would have been obvious to one of ordinary skill in the art to have modified the artist similarity discovery method of Dunning with the rating and playlist creation method of Porteus. One of ordinary skill in the art would have been motivated to have made such modifications because both Dunning and Porteus are analogous art in the field of aiding users in creating playlists of songs. Upon the modification of Dunning in view of Porteus a user would first input and discover similar artists of an identified artist. The user would then be provided with the block interface of Porteus to modify the artist list and create the playlist.

17. Regarding claim 14, modified Dunning teaches the system of claim 13 as described above. Dunning further teaches the following:

selecting the selected artist includes selecting the selected artist from a plurality of artists associated with the source of items, and *selecting the selected item includes selecting the selected item from a plurality of items in the source of items* (see page 9, paragraph [0128] through page 10, paragraph[0134] where Dunning teaches that their matches are found from the overall collections).

18. Regarding claim 15, modified Dunning teaches the system of claim 13 as described above. Dunning further teaches the following:

identifying a subset of source, items from a source of items, based on one or more preferences of a user, (pg. 7, paragraph [0106]), i.e. web site 106 offers the capability for suggesting tracks and artists that may interest the user, based on personal criteria 111, profiles 112, of track-level discovered relationships based on observed user listening behavior determined by log analysis 112 of play logs 114, and

*wherein selecting the selected item includes selecting the selected item from the subset of source items* (as may be seen in Dunning, the user is limited to results of a search. These presented artists are interpreted to be a “subset” of items, where the “items” are all possible results).

19. Regarding claim 20, modified Dunning teaches the system of claim 13 as described above. Dunning further teaches the following:

*selecting the selected item includes determining a similarity of the selected item to other items associated with the selected artist*, (pg. 6, paragraph [0092]), i.e. search

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results may be augmented by including secondary results that *are similar to or related to the primary results, according to the relationship discovery techniques of the present invention*, and

*selecting the selected item based on the similarity*, (pg. 6, paragraph [0092]), i.e. search results may be augmented by including secondary results that are similar to or related to the primary results, according to the relationship discovery techniques of the present invention.

20. Claims 8-10 and 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dunning in view of Porteus as applied to claims 1 and 13 as described above, and further in view of Cluts et al. (US 5,616,876), hereinafter Cluts.

21. Regarding claims 8, 10, 16, and 18, Dunning teaches the system of claims 1 and 13 as described above. However, Dunning does not explicitly teach a method of a selection of a level of artist similarity. Cluts teaches the following:

*the user interface comprises means for facilitating selection of a level of artist similarity by the user, and the artist similarity module is configured to identify the one or more similar artists based on the selected level of artist similarity*, (column 16, lines 1-6), i.e. the method of searching for and matching the entries in the audio content database employs a qualitative scale of closeness, which is controlled by a matching closeness indicator. In the preferred system, the matching closeness indicator is a style slide, which is presented as part of the user interface.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have further modified the similar artist search method of Dunning with the matching closeness indicator of Cluts. One of ordinary skill would have been motivated to have made such modifications because both Dunning and Cluts are analogous art in the field of searching audio files.

22. Regarding claims 9 and 17, modified Dunning teaches the system of claims 1 and 13 as described above. However, Dunning does not explicitly teach a method of a selection of a level of artist diversity. Cluts teaches the following:

*the user interface comprises means for facilitating selection of a level of artist diversity by the user, and the artist selector is configured to select the selected artist based on the selected level of artist diversity, (column 16, lines 1-6), i.e. the method of searching for and matching the entries in the audio content database employs a qualitative scale of closeness, which is controlled by a matching closeness indicator. In the preferred system, the matching closeness indicator is a style slide, which is presented as part of the user interface.*

The examiner interprets this teaching of Cluts to encompass applicant's claim in that a user of Cluts's matching closeness indicator setting that indicator to that of low closeness, the results would be more diverse than that of a high closeness.

23. Claims 11 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dunning in view of Porteus as applied to claims 1 and 13 above, and further in

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view of "PATs: Realization and User Evaluation of an Automatic Playlist Generator", published in 2002, by Pauws et al., hereinafter PATs.

24. Regarding claims 11 and 19, Dunning teaches the method of claims 1 and 13 as described above. However, Dunning does not explicitly teach a method of clustering the items. PATs teaches the following:

*an item cluster module that is configured to partition each item associated with the selected artist in the source of items into one or more clusters, based on attributes associated with each item, and wherein the item selector is further configured to select the selected item based on the cluster of the one or more clusters associated with the selected item, (page 3, paragraph 2.4), i.e. songs are clustered based on a similarity measure that selectively weighs attribute values of songs.*

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have further modified the similar artist search method of Dunning with the clustering method of PATs. One of ordinary skill would have been motivated to have made such modifications because both Dunning and PATs are analogous art in the field of searching audio files.

### ***Response to Arguments***

25. Applicant's arguments filed 5/15/2009 have been fully considered but they are not persuasive.

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26. Applicant argues on pages 12-15 that none of the prior art of record teach or suggest the limitation of "said user interface displaying the artist list for the user, and further comprising means for facilitating approval or modification of the artist list by a user".

The examiner respectfully disagrees.

Applicant directly states in the second paragraph on page 14 of their response that "it should be clear that the user interface in Porteus et al. enables the user to rate the artists in each block. However, there is no disclosure or suggestion of the user interface enabling the user to approve the artist list, or enabling the user to modify the list. Rather, the ratings given by the user MAY cause the Porteus et al. apparatus to modify or not modify the artist list". This admission by applicant mimics the examiner's interpretation of Porteus teaching "the ratings given by the user MAY cause the Porteus et al. apparatus to modify or not modify the artist list" which encompasses applicant's limitation. Not modifying the artist list using the method of Porteus is interpreted as a user approving a list in that the user does not change it in any way. Therefore, using the method of Porteus, the user may approve the list or choose to modify it.

### ***Conclusion***

27. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

-Wolinsky et al. (US 2003/0229549), discusses allowing a user to modify and approve a playlist of records.

28. All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

29. Any inquiry concerning this communication or earlier communications from the examiner should be directed to GREGORY A. DISTEFANO whose telephone number is (571)270-1644. The examiner can normally be reached on Monday through Friday, 9 a.m. - 5 p.m.



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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Bashore can be reached on 571-272-4088. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/GREGORY A DISTEFANO/  
Examiner, Art Unit 2175  
6/18/2009

/William L. Bashore/  
Supervisory Patent Examiner, Art Unit 2175